IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 777 OF 2006

Pune Municipal Corporation ... Appellant.
(Orig. Defendant)

V/s

Shri Jagtap Mahendra Raghu .... Respondent.
---- (Orig. Plaintiff)

Mr. V.G. Mujumdar for the appellant.

Mr. N.V. Vechalekar for the respondent.

CORAM: V.M. KANADE, J.
DATE : 21st September, 2007

P.C.:-

1. The appellant - Pune Municipal Corporation is challenging the Judgment and Decree dated 05/08/2005 passed by the 6th Ad-hoc Additional District Judge, Pune in Regular Civil Appeal No. 107 of 2005 arising out of Judgment and Decree dated 07/01/2005 passed by the 6th Additional Small Cause Judge & Civil Judge Senior Division, Pune in Special Civil Suit No.128 of 2003.

2. For the sake of convenience, parties shall be referred to as “Plaintiff” & “Defendant”.

3. Brief facts are as under :-

4. Plaintiff joined services of Defendant - Pune Municipal Corporation in the post of Pharmacist on 15/06/1986. In 1995, in the post of Food Inspector, several vacancies were created and, as such, the Plaintiff was appointed as Food Inspector. It is an admitted position that the pay-scale of Pharmacist and Food Inspector was the same and that the Plaintiff was appointed in the post of Food Inspector on temporary basis and, thus, was on deputation. The Government issued Resolution Dated 08/06/1995 wherein it was stated that employees of the Corporation were entitled to be considered for time bound promotion in higher pay-scale. The Corporation did not grant the said time bound promotion to the Plaintiff and, therefore, he has filed a suit against the Corporation, seeking a declaration that he was entitled to be considered for time bound promotion in the higher pay-scale with effect from 15/03/1998 and for other consequential reliefs. The Trial Court decreed the suit. Being aggrieved by the said order, Defendant preferred an appeal before the District Court which was also dismissed and being aggrieved by the order passed by the District Court, Defendant - Corporation has preferred this second appeal.

5. It is submitted by Mr. Mujumdar, the learned Counsel appearing on behalf of the Defendant - Corporation that both the Lower Courts had misinterpreted the Government Resolution of 1995. He submitted that in this Resolution it was clarified that if an employee was appointed on a

different post and, thereafter, he was transferred in the new post then he would be entitled to get promotion after 12 years from the date on which he assumed charge of the new post. It is submitted that the Plaintiff was working as Pharmacist in 1986 and, thereafter, he was appointed as Food Inspector in 1995 and, as such, he was entitled to be promoted only after he had completed 12 years in the post of Food Inspector. He submitted that though the pay-scale of both these posts was same, yet the qualification and eligibility criteria of both these posts were different. He submitted that the eligibility criteria for the post of Pharmacist was that a candidate should have passed the Course of Pharmacy and he should have been registered as Pharmacist with Maharashtra Pharmacy Council, whereas, in the case of Food Inspector, apart from being a graduate in Pharmacy, it was essential that as per Rule 9 of the Prevention of Food Adulteration Act, 1954, the candidate should have passed subject of Chemistry while obtaining graduation degree in Science Faculty or he should be a graduate in the subject of Food Technology. Mr. Mujumdar, therefore, submitted that the Government had issued a clarification that, in such cases, where though the pay-scale of both the posts occupied by the employee was the same, yet the qualifications are different then he would be entitled to get higher pay-scale in the new post after he had taken charge of the said post. He submitted that since the Plaintiff had taken charge in 1995, he was entitled to be promoted after he had completed 12 years from 1995.

6. It is not possible to accept the said submission. A perusal of the said notification and the clarification issued by the Government clearly discloses that the Government had taken decision to give time bound promotion to its employees in view of the fact that further promotion was not available to the Government employees in the higher cadre by virtue of such posts being not available and, therefore, in order to compensate such employees, the Government had taken a decision to give higher pay-scale after completion of 12 years. In the present case, the Plaintiff was appointed as a Pharmacist in 1986. Since there were number of vacancies in the post of Food Inspector, by order dated 1/12/1995, the Plaintiff was transferred to the post of Food Inspector on officiating basis. That being the position, it was not open for the Corporation to take a stand that the Plaintiff would be entitled to get promotion only after 12 years after he was appointed as a Food Inspector. Both the Courts have recorded a finding of fact after having properly interpreted the Government Resolution. Hence, no substantial question of law is raised in this second appeal. Second appeal is dismissed.

(V.M. KANADE, J.)